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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Federal Communications Commission
Office of the Secretary

Re: *Ex Parte* Communication of the American Cable Association; *Communications Marketplace Report*, GN Docket No. 18-231; *The State of Mobile Wireless Competition*, WT Docket No. 18-203; *Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 17-214; *Status of Competition in Market for Delivery of Audio Programming*, MB Docket No. 18-227; *Satellite Communications Services for the Communications Marketplace Report*, IB Docket No. 18-251

Dear Ms. Dortch:

The American Cable Association ("ACA") hereby submits this *ex parte* letter in the above-captioned proceedings to provide comment on the public draft Communications Marketplace Report ("Draft Report") released on November 21, 2018.¹ ACA applauds the Commission for developing a thorough and comprehensive Draft Report, consistent with its obligations under the statute.

ACA is also pleased that the Draft Report incorporates many of its observations on the state of communications marketplace competition. In this letter, ACA proposes targeted revisions to the Draft Report, in some cases to clarify ACA's position and in others to strengthen the Report's analysis. In particular, ACA proposes the following revisions:

- In its Fixed Competition Comments, ACA praised the Commission's efforts to promote fixed broadband competition and recommended that the Commission take further steps to remove competitive barriers that remain.² Footnote 609 of the Draft Report cites ACA's recommendation that the Commission *avoid introducing* a competitive barrier by allowing the use of Connect America Fund ("CAF") support "to subsidize overbuilds of privately funded networks in the

¹ See *Communications Marketplace Report* et al., GN Docket No. 18-231 et al., Report, FCC-CIRC1812-07 (rel. Nov. 21, 2018).

² See Comments of ACA on Fixed Broadband Competition, GN Docket No. 18-231 (filed Aug. 17, 2018) ("ACA Fixed Competition Comments").

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territories served by price-cap carriers.”³ Yet it appears that the word “not” was inadvertently omitted from that citation, reversing ACA’s intended meaning. ACA respectfully requests that, in subsequent drafts of the Report, the word “not” be inserted between the words “should” and “allow” in the portion of footnote 609 citing to page 15 of ACA’s Fixed Competition Comments.

Footnote 609 also cites to an earlier passage in ACA’s comments, on page 4, where it discussed CAF requirements. Here, ACA’s intent was not to identify any competitive “barrier,” but simply to observe that CAF rate benchmarks and minimum speed requirements are among the factors that constrain pricing and ensure a baseline level of service in rural areas served by a fixed broadband provider, whether or not the provider receives CAF subsidies. Because this point speaks to the Commission’s overall framing of its fixed broadband competition analysis, ACA recommends that the Report discuss it in the introductory paragraphs of Section II.D (“The Fixed Broadband Market”) rather than in footnote 609.

- The Report acknowledges that the networks that provide fixed broadband services often also provide voice, video and other services.⁴ Accordingly, barriers to investment and competition that persist in a market for one type of service can dampen investment in facilities that a provider would use to deliver other services as well. For instance, while the Draft Report identifies the Commission’s proposed rulemaking on cable franchising as an effort “to enhance competition and improve public service in the *video* marketplace,”⁵ a key premise of that rulemaking is that unlawful cable video franchising practices can place cable operators at a competitive disadvantage in their deployment and provision of *broadband* and other non-cable services. Similarly, as ACA explained in its Fixed Competition Comments, outdated multichannel video regulations impose costs on ACA members that detract from broadband investment.⁶

In light of these observations, ACA urges the Commission to acknowledge in the Report that competitive barriers associated with one segment of the communications marketplace may have broader impacts on other segments. In particular, we suggest the Report state that the cable franchising rulemaking is designed “to enhance competition and improve public service in the video marketplace and *should also lead to more investment in broadband and other services provided over cable networks.*” We further recommend that the Report acknowledge that the Commission’s Media Modernization reforms will promote fixed broadband competition by freeing up capital for investment in broadband networks.⁷ Similarly, we suggest that high and rising video programming fees be cited in Section II.D.3. of the Draft Report (“Regulatory and

³ See Draft Report, n.609; see also ACA Fixed Competition Comments at 15.

⁴ See Draft Report at Section II.D.1.a. (giving an overview of “technologies deployed” to provide broadband service, e.g., fiber-optic cable, and observing that such technologies are also used to deliver other services).

⁵ *Id.*, ¶ 339 (emphasis added); see also *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Further Notice of Proposed Rulemaking, FCC 18-131 (rel. Sept. 25, 2018).

⁶ See ACA Fixed Competition Comments at 11-12.

⁷ See Draft Report, ¶ 338.

Market Barriers”) as a marketplace barrier identified by ACA “that impedes ACA members’ competitive entry in fixed broadband markets.”⁸

- Paragraph 132 of the Draft Report states: “MVPDs that are vertically integrated with broadcast and cable networks may enjoy cost advantages.”⁹ This is true as far as it goes. But it fails to note that such vertically integrated entities also have the incentive and ability to raise prices in order to harm their MVPD rivals such as ACA members. This is not a mere “cost advantage.” It is the very anticompetitive activity that the program access rules were promulgated to help remedy—and which ACA recommended that the Commission consider strengthening and augmenting. We thus recommend adding the following immediately after the sentence quoted above: “Such ‘vertically integrated’ entities may also have the incentive and ability to raise costs to, and otherwise disadvantage, their MVPD rivals. Some of those rivals, especially small cable system operators, argue that existing rules are insufficient to remedy such behavior.”
- Paragraph 173 of the Draft Report observes that “[u]nlike FTTP, cable providers typically do not use fiber to carry connections directly to individual subscribers,” but instead use hybrid fiber-coaxial cable technology (“HFC”). While cable providers do use HFC, cable providers are increasingly deploying fiber-to-the-premises (“FTTP”) networks.¹⁰ To clarify this point, ACA recommends modifying sentences three through five of paragraph 173 of the Draft Report to read as follows (footnotes omitted):

“Today, most cable systems rely on hybrid fiber-coaxial (HFC) technology that uses fiber connections to send signals from the operator’s facility to an optical node near the customer’s premises and coaxial cable to send the signal to cover the remaining distance from the node to the customer’s premises. Yet cable providers are increasingly deploying FTTP networks that use fiber to connect directly to subscriber premises.”

Consistent with these proposed revisions, ACA further recommends that the phrase “hybrid fiber-coaxial technology” replace “cable broadband services” in the third sentence of paragraph 172, and that footnote 523 be revised to acknowledge cable operators’ deployment of FTTP networks.¹¹

ACA appreciates the opportunity to comment on the public draft of the Communications Marketplace Report, and it encourages the Commission to implement the suggestions proposed above.

⁸ See ACA Fixed Competition Comments at 12.

⁹ Draft Report ¶ 132.

¹⁰ See, e.g., MCTV, MCTV To Expand Service in Three New Areas, June 20, 2018, <https://www.mctvohio.com/mctv-to-expand-service-in-three-new-areas>.

¹¹ See Draft Report, ¶ 172, n.523.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.
Please address to the undersigned any questions regarding this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Hurley", with a long horizontal flourish extending to the right.

Brian Hurley